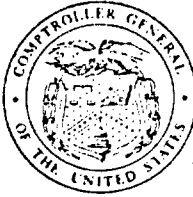


DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-185924

DATE: March 26, 1976

MATTER OF: Homemaker Health Aide Service of the
National Capital Area, Inc. - Reconsideration

DIGEST:

While new information submitted by protester in connection with request for reconsideration indicates that protest to agency was timely, protest to GAO is nevertheless untimely as it was filed more than 10 days after initial adverse agency action notwithstanding protester may not have received "final" agency decision.

Homemaker Health Aide Service of the National Capital Area, Inc., has requested reconsideration of our decision of March 1, 1976, which found its protest against the award of a contract untimely under our Bid Protest Procedures (40 Fed. Reg. 17979 (1975)). The protested award was made by the Department of Human Resources of the District of Columbia pursuant to request for proposals No. 1158-F.

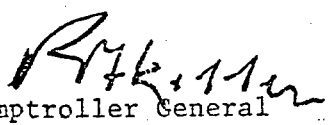
We found on the basis of the record at that time that the protest was untimely since the protester knew the basis of its protest at the latest, on January 19, 1976, and its protest to the agency was filed on February 3, 1976, more than 10 days thereafter, contrary to section 20.2 of our Bid Protest Procedures, supra. The protester requests reconsideration on the basis that our decision was predicated upon a material error of fact. In this connection, it is pointed out that the basis of protest was first learned on December 19, 1975, at a meeting with agency personnel, and that the protest was filed with the agency by letter dated December 24, 1975. In view of this new information, we agree that the protest was timely filed with the agency.

However, in its letter for reconsideration, and in the accompanying affidavit, the protester acknowledges that in a meeting with agency personnel on January 19, 1976, the substance of the protest was presented and it was advised that the protest was denied. The protester also points out that it was advised at this meeting that a written protest could be filed. The letter of February 3, 1976, previously referred to, was then submitted to the agency and reportedly no reply has been received.

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Our Bid Protest Procedures, supra, provide that where a protest is timely filed with the agency any subsequent protest to our Office must be filed within 10 days of formal notification of or actual or constructive knowledge of initial adverse agency action. Section 20.2(a) supra. Since the protest was rejected on January 19, 1976, this was the initial adverse agency action. While the protester states that the rejection of its protest was accompanied by an invitation for a further written submission, which was its February 3 letter, and no final decision by the agency on the protest has been received, we have held that such circumstances do not toll the 10 day requirement within which a protest must be filed in our Office. Verne Woodrow Contractor, Inc., B-184921, October 28, 1975, 75-2 CPD 259.

Accordingly, our prior decision that the protest is untimely and not for consideration on the merits is affirmed.


Deputy Comptroller General
of the United States